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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.: 09/685,202 Confirmation No. 4316
Applicants: Martin Rofheart et al.
Filed: October 10, 2000
TC/A.C.: 2681
Examiner: Huy D. Nguyen
Docket No.: XSI.016 / 10X-197
Customer No.: 23400
ENTITLED: METHOD AND SYSTEM FOR ENABLING DEVICE FUNCTIONS
BASED ON DISTANCE INFORMATION

ELECTION OF SPECIES WITH TRAVERSAL

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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Technology Center 2600

Sir:

In the Office Action dated February 25, 2004, the Examiner issued a requirement under 35 U.S.C. § 121, that Applicants elect a single disclosed group for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. The Examiner identified six separate groups of claims. Group I includes claims 2, 21, 28, 35, and 42; Group II includes claims 3, 7, 9-11, 19, 22, 29-32, 36-39, and 43-46; Group III includes claims 4-6; Group IV includes claims 13-16, and 18; Group V includes claims 12 and 17; and Group VI includes claims 23-26, 33, 40, and 47. The Examiner stated that claims 1, 8, 20, 27, 34, and 41 are generic.

Applicants hereby provisionally elect to prosecute the species defined by claims (including generic claims 1, 8, 20, 27, 34, and 41 and claims 3, 7, 9-11, 19, 22, 29-32, 36-39, and 43-46 in Groups II) if no generic claims are allowed. Applicants make this election with traverse.

MPEP § 803 clearly states that “[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.” This section then proceeds to note that prima facie proof of such a burden can be shown “if the examiner shows by appropriate explanation either separate classification, separate status in the art, or a different field of search as defined in MPEP § 808.02.” Applicants respectfully submit that there would be no serious burden to the Examiner to make a search covering all of the recited claims.

The Examiner has identified no reason as to why the searching of the various claims would cause an undue burden. No separate classifications, status in the art, or different fields of search have been listed. In fact, given the basic searching required for the generic claims, differences in the protocol used, in methods of distance determination, in methods of time calculation, in use of positional displays, in triangulation techniques, and in antenna use will not place an undue searching burden on the Examiner. He will likely have to search in similar places for each of claims 1-47. It would appear that restricting the claims and requiring separate searches for the different elected claims would actually place a greater burden on the Examiner by requiring him to duplicate his search efforts.

In addition, Applicants note that claim 3 is also generic to claims 4-6, 12-18, and 22-26 in addition to the claims the Examiner has identified as being in species II; claim 7 is also generic to claims 12-18 in addition to the claims the Examiner has identified as being in species II; claim 11 is also generic to claims 12-18 in addition to the claims the Examiner has identified as being in species II; claim 12 is also generic to claims 13-16 and 18 in addition to the claims the Examiner has identified as being in species V; claim 22 is also generic to 23-26 in addition to the claims

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the Examiner has identified as being in species II; claim 29 is also generic to claim 33 in addition to the claims the Examiner has identified as being in species II; claim 36 is also generic to claim 40 in addition to the claims the Examiner has identified as being in species II; and claim 43 is also generic to claim 47 in addition to the claims the Examiner has identified as being in species II.

Applicants therefore respectfully request that the Examiner withdraw the outstanding restriction requirement and perform a search on all of the generic claims and claims identified in Groups I-VI.

Although it is not anticipated that any additional fees are due or payable, the Commissioner is hereby authorized to charge any fees that may be required to Deposit Account No. **50-1147**.

Respectfully Submitted,



Brian C. Altmiller
Reg. No. 37,271

Date: March 25, 2004

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